

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

**LEE HUNT, as the personal representative of
the ESTATE OF RONALD JAY POSNER,
deceased,**

Plaintiff,

vs.

Case No. 15-CV-960 SCY/WPL

**ENGLANDER TRANSPORT, INC.,
n/k/a Mesh Investments, Inc., and LAWRENCE HAMM,**

Defendants.

**PLAINTIFF'S UNOPPOSED MOTION FOR APPROVAL OF SETTLEMENT AND
DISTRIBUTION UNDER THE NEW MEXICO WRONGFUL DEATH ACT**

Plaintiff Lee Hunt, as Personal Representative of the Estate of Ronald Jay Posner, by and through his attorneys of record, Heard Robins Cloud LLP (Justin R. Kaufman and Rosalind B. Bienvenu) and the Parnall Law Firm (Tyler J. Atkins), hereby submits this Motion for Approval of Settlement and Distribution Under the New Mexico Wrongful Death Act, and states as follows:

1. Plaintiff filed his original Complaint for Wrongful Death and Punitive Damages in the First Judicial District Court of New Mexico on August 21, 2015. ECF No. 1-1.
2. As stated in the complaint, Plaintiff was appointed the Personal Representative of the Estate of Ronald Jay Posner pursuant to the New Mexico Wrongful Death Act by the First Judicial District Court of New Mexico. *Id.* at ¶2. At the time of this filing, Mr. Posner was survived by his daughter Cindy Posner who, upon information and belief, was the sole statutory beneficiary under the New Mexico Wrongful Death Act. *See Exhibit 1* (Petition for Informal

Appointment of Personal Representative Under the New Mexico Wrongful Death Act); **Exhibit 2** (Order of Appointment).

3. On October 26, 2015, Defendant Hamm removed the case to this Court on the basis of diversity jurisdiction under 28 U.S.C. § 1332. ECF No. 1.

4. On November 5, 2015, Plaintiff filed his First Amended Complaint in this Court, naming as Defendants Englander Transport, Inc., n/k/a Mesh Investments, Inc. (“Englander”) and Lawrence Hamm (“Hamm”). ECF No. 10.

5. Recently, the parties mediated this case and as a result of the mediation, agreed to settle all claims filed by Plaintiff against Defendants Englander and Hamm. *See Exhibit 3* (Confidential Release)¹.

6. Shortly after the mediation and after Plaintiff and Cindy Posner executed the required release, undersigned counsel was contacted by Linaya Hahn. Ms. Hahn, individually and through her counsel, claimed to be the surviving common law spouse of Mr. Posner and, as such, claimed to be a beneficiary of any proceeds recovered in this case under the New Mexico Wrongful Death Act. *See* NMSA § 41-2-3 (“Personal representative to bring action; damages; distribution of proceeds”).

7. Undersigned counsel informed Cindy Posner that Ms. Hahn was alleging her status as a statutory beneficiary and, because this created a potential conflict between alleged statutory beneficiaries, Ms. Posner should secure her own counsel going forward. As a result, Ms. Posner is in the process of hiring separate counsel for the purpose of resolving the dispute

¹ This release is confidential and is being filed with the Court in redacted form. Should the Court require an unredacted copy, Plaintiffs can provide it for the Court’s in camera review upon request.

between herself and Ms. Hahn regarding the proper distribution of settlement proceeds pursuant to the New Mexico Wrongful Death Act.

8. Plaintiff respectfully requests that this Court approve the settlement entered into between Plaintiff and Defendants in this case and, further, that this Court resolve the pending dispute between Cindy Posner and Linaya Hahn regarding the distribution of settlement proceeds under the New Mexico Wrongful Death Act. In conjunction with the filing of this motion, Plaintiff will provide notice of such filing to counsel for Ms. Posner and Ms. Hahn so that respective counsel may enter their appearances and file appropriate response briefs to inform this Court of their respective positions on this issue.

9. Plaintiff has discussed the substance of this motion with Defendants and Defendants concur with this motion.

Respectfully submitted,

HEARD ROBINS CLOUD LLP



Justin R. Kaufman
Rosalind B. Bienvenu
505 Cerrillos Rd., Suite A209
Santa Fe, New Mexico 87501
(505) 986-0600
jkaufman@heardrobins.com
rbienvenu@heardrobins.com

PARNALL LAW FIRM, LLC

Tyler J. Atkins
P.O. Box 8009
Albuquerque, NM 87198
(505) 268-6500
tyler@paralllaw.com

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing has been e-served to all counsel of record on this the 7th day of November, 2016 via CM/ECF electronic service, and further that a copy of the same has been served via Email and U.S. Mail on the following:

Lynda Mihalik, Esq.
4500 19th Street, #88
Boulder, CO 80304
303-506-3789
lyndamihalik@comcast.net

Counsel to Linaya Hahn

Zachary A. Ives, Esq.
Garcia Ives Nowara
924 Second Street NW, Suite A
Albuquerque, NM 87102
505-899-1030
zach@ginlawfirm.com

Counsel to Cindy Posner

/s/Justin R. Kaufman